

The Honorable Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEGAN GRAHAM, an individual,

Plaintiff,

v.

CITY OF FEDERAL WAY, *et al.*,

Defendant.

Case No. 2:15-CV-00387 TSZ

PRETRIAL ORDER

JURISDICTION

Jurisdiction is vested in this Court by virtue of 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1367 (supplemental jurisdiction).

CLAIMS AND DEFENSES

The following claims will proceed to trial:

1. A 42 U.S.C. § 1983 Fourth Amendment excessive force claim against then Federal Way Police Officer Ashley Crispin. The parties agree that the City of Federal Way's liability under state law turns on whether Crispin is found to have used excessive force.

2. A 42 U.S.C. § 1983 Fourth Amendment failure to train *Monell* claim against the City of Federal Way.

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2100 WESTLAKE AVENUE N., SUITE 206
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206-957-9669

1. Failure of Plaintiff to Mitigate Damages; and
2. Qualified immunity with respect to the § 1983 claim asserted against Officer Crispin.

The following facts are admitted by the parties:

2. On May 27, 2013, Federal Way Police Officer Justin Antholt attempted to pulled off over for a suspected violation of RCW 46.61.667.

3. Plaintiff stopped her vehicle at the Forest Cove Apartment Complex in Federal Way, Washington.

5. During the course of their interaction, Officer Antholt ordered plaintiff to stay in her

7. During the course of their interaction, Officer Antholt ordered plaintiff to get back into her vehicle.

8. Plaintiff did not get back into her vehicle despite Officer Antholt's direction that she do so.

10. During the course of their contact, Officer Antholt requested backup.

1 11. Then Federal Way Police Officer Ashley Crispin responded to Officer Antholt's
2 request for backup.

3 12. Officer Crispin told plaintiff she was under arrest.

4 13. The Federal Way Police Officers arrested plaintiff.

5 14. Two EMTs responded to the scene and contacted plaintiff.

6 15. Federal Way Police Officer Seth Hanson took plaintiff to the South Correctional
7 Entity Multijurisdictional Misdemeanor Jail ("SCORE") in his patrol car.

8 16. Plaintiff arrived at SCORE at approximately 8:32 p.m.

9 17. Plaintiff was released from SCORE on May 29, 2013, and was taken to the Kent
10 Regional Justice Center.

11 **ISSUES OF LAW**

12 In addition to the issues presented in the parties' motions *in limine*, the following are the
13 issues of law to be determined by the court:

14 1. Has plaintiff presented sufficient evidence to support a 42 U.S.C. § 1983 failure to
15 train *Monell* claim against the City of Federal Way?

16 2. Should the Court instruct the jury on plaintiff's battery or outrage claims asserted
17 against Officer Crispin, or would such instructions be duplicative and present the risk of double
18 recovery?

19 3. Is Officer Crispin entitled to qualified immunity?

20 4. The parties anticipated other legal issues for determination, including those related
21 to jury instructions and motions for judgment as a matter of law.

EXPERT WITNESSES

(a) The parties do not believe that a limitation on the number of expert witnesses is necessary.

(b) The names and address of the expert witnesses to be used by each party at the trial and the issue upon which each will testify is:

On behalf of plaintiff:

1. **Dr. Seth Cohen, M.D. – Will Testify**
130 Nickerson St., Ste 204
Seattle, WA 98109
Tel: 206-285-3960

Dr. Cohen is the medical director of Puget Sound Psychopharmacology Service and will speak to the evaluations he provided regarding Megan Graham's need for ongoing care, ability to work, and her mental state. Dr. Cohen may also testify regarding any other matters within his knowledge, skill, training, and expertise as put at issue by Defendants' allegations and/or experts. Dr. Cohen's opinions and evaluations are more particularly set forth in Plaintiff's Rule 26 Disclosure of Expert Witnesses which included Dr. Cohen's diagnosis and report.

2. **Dr. Lawrence W. Smith, Ph.D. – Will Testify**
800 5th Ave., Ste 4100
Seattle, WA 98104
Tel: 206-447-1404
Fax: 866-571-9312

Dr. Smith is the owner of LW Smith and Associates PLLC, and will speak to the evaluations he provided regarding Megan Graham's need for ongoing care, ability to work, and her mental state. Dr. Smith may also testify regarding any other matters within his knowledge, skill, training, and expertise as put at issue by Defendants' allegations and/or experts. Dr.

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

Smith's opinions and evaluations are more particularly set forth in Plaintiff's Rule 26 Disclosure of Expert Witnesses which included Dr. Smith's diagnosis and report.

On behalf of defendants:

1. **William Partin – Possible Witness Only**
Mueller & Partin, PS, Inc.
400 108th Avenue N.E., Suite 615
Bellevue, WA 98004
(425) 455-0303

Mr. Partin is an expert economist and has been jointly retained by SCORE and the Federal Way defendants. He expected to testify on the issue of plaintiff's alleged economic losses.

2. **Grant Fredericks – Will Testify**
Forensic Video Solutions
105 West Rolland Avenue
Spokane, WA 99218
(509) 467-3559

Mr. Fredericks specializes in forensic analysis of video evidence as has been retained by SCORE to testify for regarding SCORE's Bosch Surveillance system and the video evidence in this case.

3. **Daniel A. Brzusek, D.O. – Possible Witness Only**
Northwest Rehabilitation Associates, Inc.
1600 116th Avenue N.E., Suite 202
Bellevue, WA 98004-3056
(425) 453-1000

Dr. Brzusek is a doctor of osteopathic medicine and has been jointly retained by SCORE and the Federal Way defendants. He is expected to testify on the nature of plaintiff's physical injuries, any necessary treatment that would reasonably follow from those injuries, and in response to any claim that she requires future medical care.

4. **William B. Skilling, M.A., C.R.C., C.D.M.S., C.L.C.P. – Possible Witness Only**
William B. Skilling & Company
3814 East Lee Street
Seattle, WA 98112
(206) 622-2626

Mr. Skilling is a vocational and rehabilitation expert and has been jointly retained by SCORE and the Federal Way defendants. He expected to testify regarding plaintiff's employability and her pre-incident and post-incident wage earning capacity.

5. **Douglas P. Robinson, M.D. – Will Testify**
Meridian Office Building
1833 N. 105th Street, Suite 302
Seattle, WA 98133-8973
(206) 860-2432

Dr. Robinson is a psychiatrist and has been jointly retained by SCORE and the Federal Way defendants. He is expected to testify regarding plaintiff's pre-incident and post-incident psychiatric condition.

6. **Thomas F. Ovens – Will Testify**
2203 Airport Way S, Building C
Seattle, WA 98134
(425) 221-5095

Mr. Ovens is a police practices expert and has been jointly expected by SCORE and the Federal Way defendants. He is expected to testify regarding the reasonableness of Officer Crispin's use of force and the reasonableness of the actions of SCORE's correctional officers' in restraining Ms. Graham on the ground.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

On behalf of plaintiff:

1. **Deborah Fenwick – Will Testify**

420 2nd Ave. SE
Pacific, WA 98047
Tel: 253-282-1337

Information regarding Defendants' actions during the events immediately proceedings and lasting through the arrest of Ms. Graham.

2. **Kris Maxwell – Possible Witness Only**

1605 SW 309th St, Apt. B
Federal Way, WA 98023
Tel: 206-605-4820

Information regarding Defendants' actions during the events immediately proceedings and lasting through the arrest of Ms. Graham.

3. **Kenneth McCartney – Possible Witness Only**

420 2nd Ave. SE
Pacific, WA 98047
Tel: 253-282-1337

Information regarding Defendants' actions during the events immediately proceedings and lasting through the arrest of Ms. Graham.

4. **Jewell McGill – Possible Witness Only**

5701 Orchard St.
University Place, WA 98467
Tel: 206-304-0409

Information regarding Defendants' actions during the events immediately proceedings and lasting through the arrest of Ms. Graham.

5. **Donna McLain – Possible Witness Only**

Tel: 360-425-7840

Information regarding Ms. Graham's recovery after the incident.

6. **Paul McLain – Possible Witness Only**

Tel: 360-423-0226

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2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

1 Information regarding Ms. Graham's recovery after the incident.

2 7. **Geoffrey Richie – Will Testify**

3 5609 Finch Drive, #120

4 Longview, WA 98632

Tel: 253-205-4444

5 Information regarding Ms. Graham's mental and physical state and recovery after the
6 incident of May 27, 2013.

7 8. **Gloria Sanders – Possible Witness Only**

8 Tel: 360-423-0226

9 Information regarding Ms. Graham's recovery after the incident.

10 9. **Dr. Darin J. Shook, DC – Possible Witness Only**

11 1312 Vandercook Way

Longview, WA 98362

12 Tel: 360-425-6620

Fax: 360-425-1277

13 Dr. Darin J. Shook DC has been the treating Chiropractor for Ms. Graham since the
14 incident on May 27, 2013, and will speak to the evaluations he provided regarding Megan
15 Graham's need for ongoing care. Dr. Shook may also testify regarding any other matters within
16 his knowledge, skill, training, and expertise as put at issue by Defendants' allegations and/or
17 experts.

18 10. **Susan Taylor – Possible Witness Only**

Tel: 360-414-4154

19 Information regarding Ms. Graham's recovery after the incident.

20 11. **Alex (Unknown) – Possible Witness Only**

21 31004 19th Pl. SW, Apt. D

Federal Way, WA 98023

22 Information regarding Defendants' actions during the events immediately proceedings and
23 lasting through the arrest of Ms. Graham.

24 **CHRISTIE LAW GROUP, PLLC**
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
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1 On behalf of defendants¹:

2 1. **Officer Justin Antholt – Will Testify**

3 c/o Christie Law Group, PLLC
4 2100 Westlake Ave N., Suite 206
Seattle, WA 98109
(206) 957-9669

5 Officer Antholt was involved in plaintiff's arrest on May 27, 2013, and will testify
6 regarding his knowledge regarding the facts and circumstances of that arrest.

7 2. **Officer S. Baker – Possible Witness Only**

8 c/o Christie Law Group, PLLC
9 2100 Westlake Ave N., Suite 206
Seattle, WA 98109
(206) 957-9669

10 Officer Baker was involved in plaintiff's arrest on May 27, 2013, and may testify
11 regarding her knowledge in relation to that arrest.

12 3. **Chris M. Burdyslaw – Will Testify**

13 South King Fire & Rescue
14 31617 1st Ave. So.
Federal Way, WA 98003
(253) 839-6234

15 Mr. Burdyslaw is an EMT and examined plaintiff at the scene of the incident and will
16 testify regarding his knowledge of her condition at that time.

17 4. **Ashley Crispin – Will Testify**

18 c/o Christie Law Group, PLLC
19 2100 Westlake Ave N., Suite 206
Seattle, WA 98109
(206) 957-9669

20
21
22
23 ¹ The Federal Way and SCORE defendants have nearly identical witness lists. For purposes of clarity and to avoid
24 duplication, their other witnesses are jointly listed here. If a witness is designated by one defendant only, that
information is included in the description.

1 Mr. Crispin is a defendant in this case and will testify regarding his knowledge regarding
2 the facts and circumstances of plaintiff's arrest on May 27, 2013, and in response to plaintiff's 42
3 U.S.C. § 1983 claim asserted against the City of Federal Way.

4 **5. Captain Robert Ellis – Will Testify by Video**

c/o Stewart A. Estes
5 KEATING BUCKLIN & MCCORMACK
800 Fifth Avenue, Suite 4141
6 Seattle, WA 98104
(206) 623-8861

7
8 Captain Robert Ellis will testify as to his knowledge of the incidents at SCORE jail as
9 well as Plaintiff's allegations that she was "beat up" at SCORE jail. He has already testified by
10 perpetuation deposition and SCORE will play that video at trial.

11 **6. Natalie Eslinger – Will Testify**

c/o Stewart A. Estes
12 KEATING BUCKLIN & MCCORMACK
800 Fifth Avenue, Suite 4141
13 Seattle, WA 98104
(206) 623-8861

14 Natalie Eslinger will testify as to her knowledge of the incidents at SCORE jail as well as
15 Plaintiff's allegations that she was "beat up" at SCORE jail.

16 **7. Deborah Fenwick – Possible Witness Only**

1605 SW 309 St., #A
17 Federal Way, WA 98023
(253) 838-3558

18 Ms. Fenwick may testify as to her knowledge regarding plaintiff's arrest on May 27,
19 2013.

20 **8. Megan Graham – Possible Witness Only**

c/o Matthew Cunanan & Drew Davis
21 DC Law Group NW
101 Warren Ave N
22 Seattle, WA 98109
(206) 494-0400

23
24 **CHRISTIE LAW GROUP, PLLC**
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

1 Defendants may call plaintiff Megan Graham to testify regarding her claims in this case,
2 including either her liability claims or damages claims. The defendants may play portions of her
3 deposition at trial, consistent with Fed. R. Civ. P. 32(a)(3). A copy of the entire transcript of
4 plaintiff's deposition shall be provided to the Court in advance of trial.

5 **9. Officer Seth Hanson – Will Testify**

6 c/o Christie Law Group, PLLC
7 2100 Westlake Ave N., Suite 206
8 Seattle, WA 98109
(206) 957-9669

9 Officer Hanson was involved in plaintiff's arrest on May 27, 2013, and will testify
10 regarding his knowledge of his actions in relation to that arrest.

11 **10. Brandon Hicks – Will Testify**

12 c/o Stewart A. Estes
13 KEATING BUCKLIN & MCCORMACK
14 800 Fifth Avenue, Suite 4141
15 Seattle, WA 98104
(206) 623-8861

16 Brandon Hicks will testify as to his knowledge of the incidents at SCORE jail as well as
17 Plaintiff's allegations that she was "beat up" at SCORE jail.

18 **11. Officer Chris Martin – Will Testify**

19 c/o Christie Law Group, PLLC
20 2100 Westlake Ave N., Suite 206
21 Seattle, WA 98109
22 (206) 957-9669

23 Officer Martin was involved in plaintiff's arrest on May 27, 2013, and will testify
24 regarding his knowledge of his actions in relation to that arrest.

12. Commander Stan McCall – Possible Witness Only

c/o Christie Law Group, PLLC
2100 Westlake Ave N., Suite 206
Seattle, WA 98109
(206) 957-9669

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

1 Commander McCall may testify regarding his knowledge of the City of Federal Way's
2 policies and procedures and Manual of Standards and any other issues related to plaintiff's 42
3 U.S.C. § 1983 claim against the City of Federal Way. This witness is designated by the Federal
4 Way defendants only.

5
6 13. **Adam Munson – Will Testify**
7 c/o Stewart A. Estes
8 KEATING BUCKLIN & MCCORMACK
9 800 Fifth Avenue, Suite 4141
10 Seattle, WA 98104
11 (206) 623-8861

12 Adam Munson will testify regarding the SCORE jail BOSCH video system and
13 surveillance cameras, including video recording, playback, and burning.

14 14. **Lt. Cary Murphy – Possible Witness Only**
15 c/o Christie Law Group, PLLC
16 2100 Westlake Ave N., Suite 206
17 Seattle, WA 98109
18 (206) 957-9669

19 Lt. Murphy was involved in plaintiff's arrest on May 27, 2013, and may testify regarding
20 his knowledge of his actions in relation to that arrest.

21 15. **David Parker, MD – Will Testify**
22 Correct Care Solutions (fka Correctional Healthcare Companies)
23 20817 17th Avenue South
24 Des Moines, WA 98198
(206) 257-6200

David Parker will testify regarding his knowledge of Plaintiff's medical care at SCORE.

16. **John Petrie – Will Testify**
c/o Stewart A. Estes
KEATING BUCKLIN & MCCORMACK
800 Fifth Avenue, Suite 4141
Seattle, WA 98104
(206) 623-8861

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

1 John Petrie will testify as to his knowledge of the incidents at SCORE jail as well as
2 Plaintiff's allegations that she was "beat up" at SCORE jail.

3 17. **Pedro Santos – Will Testify**

4 c/o Stewart A. Estes
5 KEATING BUCKLIN & MCCORMACK
6 800 Fifth Avenue, Suite 4141
7 Seattle, WA 98104
8 (206) 623-8861

9 Pedro Santos will testify as to his knowledge of the incidents at SCORE jail as well as
10 Plaintiff's allegations that she was "beat up" at SCORE jail.

11 18. **Travis E. Sapp – Possible Witness Only**

12 South King Fire & Rescue
13 31617 1st Ave. So.
14 Federal Way, WA 98003
15 (253) 839-6234

16 Mr. Sapp is an EMT who examined plaintiff at the scene of the incident and may testify
17 regarding his knowledge of her condition at that time.

18 19. **Deputy Chief Kyle Sumpter – Will Testify**

19 Federal Way Police Department
20 33325 8th Ave. S.
21 Federal Way, WA 98003
22 (253) 835-6700

23 Deputy Chief Sumpter will testify regarding his knowledge regarding the City of Federal
24 Way's policies and officer training on arrest procedures and use of force, as well as any other
matters put at issue by plaintiff's 42 U.S.C. § 1983 claim against the City of Federal Way. This
witness is designated by the Federal Way defendants only.

20. **Officer James Widick – Possible Witness Only**

c/o Christie Law Group, PLLC
2100 Westlake Ave N., Suite 206
Seattle, WA 98109
(206) 957-9669

CHRISTIE LAW GROUP, PLLC
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

1 Officer Widick responded to the scene of plaintiff's arrest on May 27, 2015, and may
2 testify regarding what he witnessed at that time.

3 **EXHIBITS**

4 By September 16, 2016, the parties shall file a revised exhibit list.

5 **ACTION BY THE COURT**

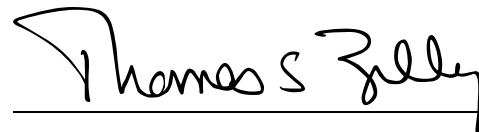
6 (a) This case is scheduled for trial before a jury on September 19, 2016, at the United
7 States District Court for the Western District of Washington at Seattle.

8 (b) Trial briefs shall be submitted to the Court on or before September 6, 2016.
9 Supplemental trial briefs, not to exceed five (5) pages in length, shall be submitted to the Court
10 on or before September 14, 2016.

11 (c) Jury instructions requested by either party shall be submitted to the Court on or
12 before September 6, 2016. Suggested questions of either party to be asked of the jury by the
13 Court on voir dire shall be submitted to the Court on or before September 6, 2016.

14 This Order has been approved by the parties as evidenced by the signatures of their
15 counsel. This Order shall control the subsequent course of the action unless modified by a
16 subsequent order. This Order shall not be amended except by order of the Court pursuant to
17 agreement of the parties or to prevent manifest injustice.

18 DATED this 9th day of September, 2016.

19
20 

21 Thomas S. Zilly
22 United States District Judge

23
24 **CHRISTIE LAW GROUP, PLLC**
2100 WESTLAKE AVENUE N., SUITE 206
SEATTLE, WA 98109
206-957-9669

1 RESPECTFULLY SUBMITTED this 6th day of September, 2016.

2 DC LAW GROUP NW

3 /s/ Drew Davis

4 Matthew Cunanan, WSBA #42530
5 Drew Davis, WSBA #47297
6 Christopher Wieting, WSBA #48207
7 Attorneys for Plaintiff
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14 KEATING, BUCKLIN &
15 MCCORMACK, P.S., INC.

16 /s/ Stewart A. Estes

17 Stewart A. Estes, WSBA #15525
18 Derek Chen, WSBA # 49723
19 Attorney for Defendant SCORE
20 800 5th Avenue, Suite 4141
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/s/ Ann E. Trivett

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